

OFFICE OF THE ATTORNEY GENERAL

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Acting Attorney General for the District of Columbia (Attorney General), pursuant to section 9 of the District of Columbia Poverty Lawyer Loan Assistance Repayment Program Act of 2006 (Act), effective March 2, 2007, D.C. Law 16-203, D.C. Official Code § 1-308.21 *et seq.* (2007 Supp.), and Mayor's Order 2006-161, dated November 8, 2006, hereby gives notice of the adoption, on an emergency basis, of the following amendments to Chapter 24 of Title 1 of the *District of Columbia Municipal Regulations* (DCMR). These amendments update the existing rules in Chapter 24 to reflect changes to the Act included in the Fiscal Year 2008 Budget Support Act of 2007, effective September 18, 2007, D.C. Law 17-20, 54 DCR 7052. These changes limited the Council's statutory designation of the District of Columbia Bar Foundation as the Administrator of the District of Columbia Poverty Lawyer Loan Assistance Repayment Program (Program) to fiscal year 2008, which will require the Office of the Attorney General (OAG) to conduct a competitive process for designating a third party Administrator and awarding a grant to fund the Program in fiscal year 2009. The amendments give effect to the Council's changes to the Act and establish the rules that the OAG will follow in designating the Administrator and awarding the grant. Issuance of the rules on an emergency basis is necessary to ensure that the competitive process is completed and the grant is awarded in time to permit the Program Administrator to begin accepting applications for financial assistance early in the fiscal year. The emergency rules were adopted on August 12, 2008 and shall remain in effect for up to one hundred twenty (120) days, until December 9, 2008, unless superseded by another rulemaking notice.

The Attorney General also gives notice of his intent to take final rulemaking action to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 24 of Title 1 DCMR is amended as follows:**I. Section 2401.3 is amended to read as follows:**

- 2401.3 The Attorney General shall establish the Program in accordance with this chapter and the District of Columbia Poverty Lawyer Loan Assistance Repayment Program Act of 2006 (Act), effective March 2, 2007, D.C. Law 16-203, D.C. Official Code § 1-308.21 *et seq.* (2008 Supp.). The Attorney General may serve as the Administrator of the Program or may designate a third party to serve as the Administrator. If the Attorney General designates a third party as the Administrator, the Attorney General may provide funding for the Program by awarding a grant to the third party.

II. Section 2402.1 is amended to read as follows:

- 2402.1 The District of Columbia Bar Foundation is appointed as the Administrator for the Program for fiscal years 2007 and 2008. Thereafter, if the Attorney General designates a third party Administrator, the Attorney General shall select the third party according to the procedures stated in § 2411.

III. Section 2405 is amended as follows:**A. Section 2405.1 is amended to read as follows:**

- 2405.1 Eligible employment shall consist of employment as an attorney with a non-profit organization that provides direct civil legal services to low-income or under-served District of Columbia residents. Qualifying organizations shall consist of organizations that provide direct legal services to the poor or under-served and that are approved by the Administrator.

B. Section 2405.3 is repealed.**IV. A new section 2411 is added to read as follows****2411 DESIGNATION AND DUTIES OF THE ADMINISTRATOR**

- 2411.1 If the Attorney General decides to designate a third party to serve as the Administrator of the Program in a specific fiscal year, the Attorney General shall solicit applications for this purpose. The Attorney General shall make the designation and award the associated grant competitively, according to the procedures stated in this section. The Administrator's performance shall be governed by the provisions of this section, this chapter, the Act, and the grant agreement.
- 2411.2 The Attorney General may designate the Administrator and award a grant to operate the Program for a period of up to five (5) years, provided that: 1) District payments under the grant for any fiscal year shall not exceed actual appropriations for that fiscal year; and 2) nothing in these rules, the grant agreement, or the solicitation process shall be construed as a promise that Congress will appropriate funds to support the Program for the entire duration of the grant.
- 2411.3 The Attorney General shall announce the availability of the position of Administrator and the associated grant for the Program by one (1) of the following methods:
- (a) Publication in a newspaper of general circulation in the District of Columbia;
 - (b) Publication in the District of Columbia Register; or

- (c) Any other officially established form of notice, including the Office of Partnerships and Grant Services' Funding Alert, designed to reach prospective applicants.

2411.4 The announcement shall include the following:

- (a) A brief description of the Program;
- (b) The estimated total funds available;
- (c) A statement setting forth who is eligible to apply for the position of Administrator and for the grant;
- (d) A statement of the application requirements, including a budget and appropriate certifications and assurances;
- (e) The deadline for submission of applications;
- (f) The review factors to be used in selecting the Administrator;
- (g) The source of funds and estimated time the funds are available;
- (h) An address where detailed information may be obtained and where the application may be filed; and
- (i) The time and place of a pre-application information session for prospective applicants, if the Attorney General determines that such a session would be useful.

2411.5 A review panel selected by the Attorney General shall review each application to determine if it meets the applicable requirements and if the applicant is eligible to serve as the Administrator. The review panel shall advise the Attorney General of all those applications which satisfy the application and eligibility requirements, rate the applications according to the review factors, and recommend an applicant to serve as the Administrator.

2411.6 The Attorney General shall consider the review panel's ratings and recommendation and designate the Administrator. The Attorney General shall also appoint a Grant Officer within the Office of the Attorney General to monitor the Administrator's performance and administer the grant. The Grant Officer shall notify the successful applicant in writing of the decision. The Attorney General's decision is final and may not be appealed.

2411.7 The grant award and the designation of the Administrator shall be in the form of a written grant agreement between the Attorney General and the designee. It shall

include, but not be limited to the following:

- (a) A statement designating the successful applicant as the Administrator
- (b) A statement of the purpose of the grant;
- (c) The amount of the grant award;
- (d) The duration of the grant;
- (e) References to provisions of statutes, rules, and regulations (including provisions of this chapter) particularly applicable to the Program, as well as a statement that the grantee shall comply with all applicable federal and District laws and regulations;
- (f) The scope of work for the grant and the Program, a statement of all deliverables and performance measures, and a schedule of expected performance;
- (g) Reporting requirements, both program and financial;
- (h) A payment schedule;
- (i) The name, address and telephone number of the Grant Officer and the point of contact for the Administrator;
- (j) The address to which all written communications from the Grant Officer to the Administrator may be sent, including payments due under the grant, and
- (k) A provision that the grant may be modified by agreement of both parties.

2411.8 The Administrator shall make complete disclosure of all financial transactions involving grant funds in accordance with the reporting requirements of the grant agreement and shall maintain records which identify adequately the source and application of all funds received and utilized in connection with the Program.

2411.9 The Administrator shall maintain effective control and accountability for all grant assets, shall adequately safeguard all property, and shall assure that all grant assets are used solely for authorized purposes. The Administrator's records shall compare the actual and budgeted amounts of expenditures, and shall be supported by source documentation such as canceled checks, paid bills, payrolls, contract and award documents.

2411.10 The Administrator shall submit timely programmatic and financial reports to the Grant Officer, as required by the grant agreement, and shall participate in all District or federal audit activities applicable to the Program.

V. The definition of “Act” in section 2499.1 is amended to read as follows:

Act – the District of Columbia Poverty Lawyer Loan Assistance Repayment Program Act of 2006, effective March 2, 2007, D.C. Law 16-203 (Act), D.C. Official Code § 1-308.21 *et seq.* (2008 Supp.).

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Laurie A. Ensworth, Senior Assistant Attorney General, Legal Counsel Division, 1350 Pennsylvania Avenue, N.W., Suite 409, Washington, D.C. 20004. Copies of these proposed rules may also be obtained without charge at this address.